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Opinion Committee FILE # ~~ME-21943~~

I.D.# 21943

RQ-601

Mr. Dan Morales  
Attorney General of Texas  
Attn: Opinions Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

RE: Sherman Independent School District;  
Payment of Scholarships from the General Fund

Dear Mr. Morales:

I request on behalf of the Superintendent of the Sherman Independent School District an opinion on whether or not the District can award scholarships to its top graduates out of the general fund.

The Texas Constitution, Article 3, Section 51, provides in part as follows: "The Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual...".

Other pertinent Constitutional and statutory provisions are as follows:

Art. 3, Sec. 52 (a) of the Texas Constitution provides in part: "...[T]he Legislature shall have no power to authorize any ... political ... subdivision of the State ... to grant public money ... in aid of, or to any individual....".

Art. 16, Sec. 6 of the Texas Constitution provides in part: "(a) No appropriation for private or individual purposes shall be made, unless authorized by this Constitution. ..."

The Texas Education Code, Section 20.48, provides in part:

"(a) The public free school funds shall not be expended except as provided in this section.

"(b) The state and county available funds shall be used exclusively for the payment of teachers' and superintendents' salaries, fees for taking the scholastic census, and interest on money borrowed on short time to pay salaries of teachers and superintendents ...

"(c) Local school funds from district taxes, tuition fees of pupils not entitled to free tuition and other local sources may be used for the purposes enumerated for state and county

funds and for [other enumerated purposes], and for other purposes necessary in the conduct of the public schools to be determined by the board of trustees ...". (Emphasis added.)

There does not appear to be a single reported case or Attorney General's opinion concerning the power of a school board to fund scholarships out of public money. One must rely on the Constitutional and statutory law, and reported cases construing such law, to reach an opinion on the "scholarships" issue.

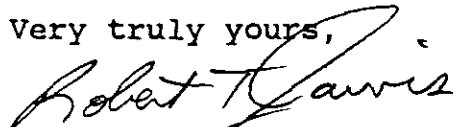
The case of *Mitchell vs. State*, 692 S.W.2d 909 (Tex.App.Beaumont, 1985, writ refused), contains some instructive language. In that case, a person employed as a bookkeeper by the Beaumont I.S.D. was convicted of theft of public money entrusted to her care. In appealing from this conviction, the defendant argued that there was no proof that the School District did not consent to her appropriation of the money. In affirming the conviction, the appeals court stated:

" ... [Beaumont] I.S.D. is a political subdivision of the State, created and existing under certain general statutes of the State, to wit: Chapters 19 and 23 of the Texas Education Code. Pursuant to TEX. CONST. Art. 3, Sec. 52(a) ... and Art. 16, Sec. 6 ..., such political subdivisions and all of their officers are totally without power or authority to consent to the payment of any of their funds which is not made in return for goods or services for the political subdivision, or to permit any appropriation of such funds for private or individual purposes. Therefore B.I.S.D. could not give its effective consent to [defendant's] appropriation of such funds. ...". (Emphasis added.)

Because the scholarship program is so worthwhile, and has so many commendable goals associated with it, it is hard to characterize it as not being a purpose "necessary in the conduct of the public schools." However, a scholarship in the strict sense is granted for a private or individual purpose, and payment of public money for a scholarship is not made "in return for goods or services for" the school district. If put to a court test, a court would probably hold that payment of a scholarship with public money is unconstitutional.

If I can provide any information which would be helpful, please let me know.

Very truly yours,



Robert T. Jarvis  
Grayson County Attorney

cc: Ron Clark, Attorney  
Bob Denton, Superintendent